

CHAPTER 19
TRIBAL EMPLOYMENT RIGHTS

19-1 TITLE

19-1.01 This chapter shall be known as the Kootenai Tribal Employment Rights Ordinance.

19-2 POLICY

19-2.01 It is the policy of the Kootenai Tribe of Idaho to provide employment for all tribal members and other Indians living on and near the Kootenai Reservation who are able and willing to work.

19-3 PURPOSE

19-3.01 The purpose of this chapter is to insure preference in hiring for tribal members and other Indians on Kootenai lands and to insure compliance with federal and state laws related to Indian hiring on and near the Kootenai Reservation.

19-4 DEFINITIONS

19-4.01 For the purposes of this chapter, unless required by the context, the following words and phrases shall have the following meanings:

(1) "Director" shall mean the director of the Kootenai Tribal Employment Rights office.

(2) "Employer" shall mean any person, company, contractor, subcontractor, or other entity located or otherwise engaged in work on or near the Kootenai Reservation. It includes any contractor or subcontractor of a governmental agency engaged in work on or near the Reservation. The term "employer" does not include federal and tribal government agencies.

(3) "Indian" shall mean any member of the Kootenai Tribe of Idaho, any Indian spouse or child of a member and any federally recognized Indian who is living, working, or has applied for a job on or near the Reservation.

(4) "TERO" shall mean the Kootenai Tribal Employment Rights Office or ordinance, as may be appropriate.

19-5 TRIBAL EMPLOYMENT RIGHTS OFFICE

19-5.01 There shall be included in the Kootenai Tribal Government a Tribal Employment Rights Office (TERO). The duties of TERO shall be:

(1) To list all employers and labor unions operating on or near the Reservation that are subject to tribal, federal, and/or state hiring laws affecting Kootenai members.

(2) To investigate hiring practices and policies of the foregoing employers and labor unions regarding Indians.

(3) To issue rules and guidelines to implement the employment rights requirements imposed by this chapter.

(4) To require employers to submit reports and to take such other actions as are necessary for the fair implementation of this chapter.

(5) To bring actions in tribal court to enforce this chapter and TERO rules, provided the bringing of any action shall first be subject to the approval of the Council.

(6) To file complaints with the Equal Employment Opportunity Commission.

(7) To assist Indians with Equal Employment Opportunity Commission complaints against employers.

(8) To enter into cooperative relationships with federal and state employment rights agencies in order to end discrimination against Indians on and near the Kootenai Reservation.

(9) To set appropriate fees to be imposed on employers, subject to the approval and waiver authority of the Council.

19-5.02 The TERO is further authorized to:

(1) Impose numerical hiring goals and time tables establishing the minimum number of Indians an employer must hire by craft or skill level.

(2) Require employers to set up or participate in such training programs as the TERO determines are necessary to increase the pool of qualified Indians on or near the Reservation as quickly as possible.

(3) Establish, in conjunction with the tribal Jobs Training Partnership Act Program, a tribal hiring hall and impose a requirement that no employer may hire a non-Indian for work on the Reservation until the hiring hall has certified that no qualified Indian is available for the vacancy.

(4) Enter into agreements with labor unions to insure compliance with this chapter.

(5) Require on-Reservation employers to give preference in the award of subcontracts to tribal and other Indian-owned firms and entities.

(6) Establish programs, in conjunction with other tribal and federal offices, to provide counseling and support to Indian workers to help them to obtain and keep jobs.

(7) Prohibit any employer, in its on-Reservation employment, from using qualification criteria or other requirements that form barriers to Indian employment unless the employer can show what such criteria or requirements are required by business necessity. In developing rules and guidelines to implement this requirement, the TERO shall adopt the Equal Employment Opportunity Commission guidelines on these matters to the extent they are appropriate, provided, however, that the TERO may create other requirements in order to address employment barriers unique to Indians.

(8) Take such other actions as are necessary to achieve the purposes of this chapter, subject to the approval of the Council.

19-5.03 Director. The Tribal Council will appoint a TERO director according to tribal hiring policies and procedures. The Director shall administer the TERO and carry out the duties of the office as stated herein.

19-6 DUTIES OF EMPLOYERS

19-6.01 Indian Preference. To the extent allowed by federal law, all employers operating on the Reservation shall give preference to Indians and Indian owned companies in hiring, promotion,

training, other aspects of employment, and in contracting or subcontracting for work on the Reservation. Employers shall comply with the tribal ordinances, resolutions, TERO rules and guidelines, and federal and state employment laws to the extent they do not conflict with the foregoing.

19-6.02 Employer-Union Agreements. Any employer operating on the Reservation who has a collective bargaining agreement with one or more unions shall obtain a written agreement that the union will comply with the Indian preference laws, rules, regulations, and guidelines of the Tribe as to on-Reservation work. Such agreement shall be subject to the approval of the TERO. Such agreement shall not constitute official tribal recognition or sanction of the unions.

19-6.03 Tribal Hiring Hall. An employer, for on-Reservation work, may recruit and hire workers from whatever sources and by whatever process it chooses, provided that it may not hire a non-Indian until it has given the TERO a reasonable time to locate a qualified Indian. For the purposes of this section, "reasonable time" shall be defined as follows: For construction jobs, the TERO shall have 48 hours to locate and an additional 12 hours to refer a qualified Indian; for other kinds of employment, the TERO shall have five (5) working days. The TERO shall consider waivers of these time periods if the employer shows that time periods if the employer shows that a time period would impose an undue burden on it. An employer shall be exempt from this procedure if it has a collective bargaining agreement with a union and the union places on its referral list and gives priority to all persons that the TERO refers to them.

19-7 SANCTIONS

19-7.01 Sanction by Director. The Director shall impose sanctions on any employer the Director finds to be in violation of this chapter or TERO rules, provided, however, that notice and opportunity for explanation shall be provided to the employer before any sanction may be imposed. Sanctions shall be civil fines in amounts between \$100 and \$500 per violation of this chapter or TERO rules.

19-7.02 Removal of Non-Indian. An employer who hires a non-Indian employee in violation of this chapter or TERO rules shall be sanctioned. Any non-Indian employee shall be subject to summary removal by the employer from the job and any

claims or remedies for such removal shall be between the employer and the employee.

19-7.03 Sanction by Tribal Court. The Tribal Court may impose further sanction after considering mitigating factors such as the employer's effort to comply and its efforts to remedy any harm done by noncompliance as follows:

(1) Suspend the employer's operation until it takes corrective action or the TERO and the employer develop a plan for corrective action.

(2) Terminate the employer's operation on the Reservation.

(3) Require the employer to remove certain employees and/or hire certain employees.

(4) Require the employer to provide back pay, employment, promotion, training, and/or other relief to Indians who were harmed by the employer's noncompliance.

(5) Require the employer to change its procedures or policies as necessary in order to comply with tribal requirements.

19-8 PROCEDURES

19-8.01 Publication. The Director shall provide a copy of this chapter and TERO rules and guidelines to all employers. All bid announcements issued by any tribal, federal, state or other private or public entities shall contain a statement that the successful bidder must comply with this ordinance and TERO rules and guidelines and that a bidder may contact the TERO to obtain further information. The Director shall keep a record of all employers who have received a copy of this ordinance and TERO guidelines. The Director may not impose a sanction on any employer to whom he/she did not send the appropriate ordinance or rules.

19-8.02 Reporting or On-Site Inspections. Employers shall submit reports and such other information as is requested by the TERO. The Director and TERO employees have the right to make on-site inspections in order to monitor employers' compliance with this chapter and TERO rules. Further, they have the right to inspect and copy all relevant records of an employer, of the employer's signatory unions or subcontractors, and to speak with employees on the job site, and to

perform similar investigatory activities. All information collected by the TERO shall be kept confidential unless disclosure is required in the process of imposing a sanction or pursuing an action in Tribal Court or before the Equal Employment Opportunity Commission.

19-8.03 Notice of Noncompliance. If the Director believes that an employer has failed to comply with any of the requirements of this chapter or the TERO rules, he/she shall notify the employer in writing, specifying the alleged violation(s). The employer is entitled to present evidence, including testimony, to the Director under informal procedures to show its compliance and why it should not be subject to sanction. Likewise, the Director may call witnesses and present evidence in the Tribe's behalf.

19-8.04 Appeal. An employer has the right to appeal to the tribal court any adverse decision and sanction of the Director.

19-9 WAIVER

19-9.01 Discretion of Council. Under extraordinary circumstances, the Tribal Council is authorized to waive the requirements of this ordinance but only to the extent such waiver is determined to be in the best interests of the Tribe as a whole.

